

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA for the use of
WALTHAM LIME & CEMENT COMPANY,
Plaintiff,

v.

Civil Action No. 1:05-cv-10138 NG

PEABODY CONSTRUCTION CO., INC., ODF
CONTRACTING CO., INC.,
HOON COMPANIES, INC. and TRAVELERS
CASUALTY AND SURETY COMPANY OF
AMERICA,
Defendants.

**ASSENTED-TO MOTION REQUESTING EXTENSION OF TIME TO RESPOND TO
COMPLAINT OF WALTHAM LIME & CEMENT COMPANY**

Defendants Travelers Casualty and Surety Company of America ("Travelers"), Peabody Construction Co., Inc. ("Peabody"), and Hoon Companies, Inc. ("Hoon") (collectively "Movants") hereby move this Court for an extension of time, through and including May 31, 2005, to file their response to the Complaint of Waltham Lime & Cement Company in the above-captioned proceeding. In support of this motion, Movants state as follows:

Plaintiff Waltham Lime & Cement Company ("Waltham Lime") initially brought its claims against Defendants in the Middlesex Superior Court (C.A. 03-01407) seeking, among other things, recovery on a payment bond. On or about January 10, 2005, the Middlesex Superior Court (Lauriat, J.) dismissed Waltham Lime's payment bond claims on the grounds that the construction project for which the payment bond was issued was a "public work or public building of the Federal Government" as defined under 40

U.S.C. § 3131, *et seq.* As the District Court has exclusive jurisdiction over claims under 40 U.S.C. § 3131, Waltham Lime re-filed its dismissed claims in this Court on or about January 21, 2005.

Waltham Lime recently advised Movants that it intends to file a Motion for Reconsideration in connection with the Middlesex Superior Court's ruling dismissing its payment bond claims. In the event Waltham Lime is successful in securing reconsideration of this issue, it will likely be unnecessary to litigate the claims under 40 U.S.C. § 3131 in this Court. As such, Movants request an extension to their obligation to respond to Waltham Lime's Complaint in this action to allow the Superior Court to rule on Waltham Lime's motion for reconsideration. In the event Waltham Lime is not successful in securing reconsideration, Movants will respond to Waltham Lime's Complaint herein.

Counsel for Waltham Lime assents to the relief requested herein.

WHEREFORE, Movants respectfully request that this Honorable Court:

- A. Grant Travelers, Peabody and Hoon an extension of time, through and including May 31, 2005, to file their response to the Complaint of Waltham Lime; and
- B. Grant such other and further relief as justice may require.

Respectfully Submitted,
**TRAVELERS CASUALTY & SURETY
COMPANY OF AMERICA**

By its attorneys,

/s/ Jonathan C. Burwood

Bradford R. Carver, BBO #565396
Jonathan C. Burwood, BBO #643674
Cetrulo & Capone LLP
Two Seaport Lane, 10th Floor
Boston, MA 02110
(617) 217-5500

Respectfully Submitted,
**PEABODY CONSTRUCTION CO.,
INC.; HOON COMPANIES, INC.**

By its attorneys,

/s/ Charles A. Plunkett

Charles A. Plunkett, Esq., BBO #547714
Vena, Riley, Deptula, LLP
250 Summer Street, 2nd Floor
Boston, MA 02210

Assented to by:
WALTHAM LIME & CEMENT COMPANY
By their attorneys,

/s/ David B. Hobbie

Anthony M. Moccia, BBO #350225
David B. Hobbie, BBO #637107
ECKERT SEAMANS CHERIN & MELLOTT, LLC
One International Place, 18th Floor
Boston, Massachusetts 02110
Telephone: (617) 342-6800
Facsimile: (617) 342-6899

Date: April 21, 2005

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA for the use of
WALTHAM LIME & CEMENT COMPANY,
Plaintiff,

v.

Civil Action No. 1:05-cv-10138 NG

PEABODY CONSTRUCTION CO., INC., ODF
CONTRACTING CO., INC.,
HOON COMPANIES, INC. and TRAVELERS
CASUALTY AND SURETY COMPANY OF
AMERICA,
Defendants.

**ORDER ON ASSENTED-TO MOTION REQUESTING EXTENSION OF TIME TO
RESPOND TO COMPLAINT OF
WALTHAM LIME & CEMENT COMPANY**

Upon Travelers Casualty and Surety Company of America, Peabody Construction Co., Inc., and Hoon Companies, Inc.'s Assented-to Motion Requesting Extension of Time to File Response to the Complaint of Plaintiff Waltham Lime and Cement Company (the "Motion") for good and sufficient cause, it is hereby ORDERED, ADJUDGED and DECREED that:

- A. The Motion is granted; and
- B. Movants shall respond to the Complaint on or before May 31, 2005.

Dated: _____

Nancy Gertner, Judge
United States District Court
for the District of Massachusetts